

AMENDED IN SENATE JANUARY 12, 2004

AMENDED IN SENATE JANUARY 5, 2004

AMENDED IN SENATE APRIL 22, 2003

**SENATE BILL**

**No. 433**

---

**Introduced by Senator Ortiz**

February 20, 2003

---

*An act to amend Sections 22973.1, 22973.2, 22974.8, and 22980.2 of, and to add Section 22980.05 to, the Business and Professions Code; An act to add Section 22980.05 to, and to repeal and add Section 22974.8 of, the Business and Professions Code, relating to tobacco.*

LEGISLATIVE COUNSEL'S DIGEST

SB 433, as amended, Ortiz. Tobacco products: licensing of retailers.

(1) ~~The Cigarette and Tobacco Products Licensing Act of 2003 requires the board to issue a license to a retailer upon receipt of a completed application and payment of fees, unless the retailer has previously been issued a license that is suspended or revoked by the board, the application is for a license or renewal of a license for a retail location that is the same retail location as that of a retailer whose license was revoked or is subject to revocation proceedings, the retailer has been convicted of a specified felony, or the retailer does not possess all required permits or licenses.~~

~~This bill would additionally prohibit the board from issuing a license to a retailer if the application is for a license for a retail location that has no fixed geographical location.~~

(2) ~~The act requires the board to, upon request, provide to the State Department of Health Services, the office of the Attorney General, a~~

~~law enforcement agency, and any agency authorized to enforce local tobacco control ordinances, access to the board's database of licenses issued to retailers within the jurisdiction of that agency or law enforcement agency. The act limits access to the purposes of enforcing tobacco control laws, and requires adherence to all state laws, policies, and regulations pertaining to the protection of personal information and individual privacy.~~

~~This bill would require the board to additionally provide access to any local health department, and would authorize access for the additional purposes of conducting public health surveillance and educational outreach. The bill would require the State Board of Equalization to make available to the public, via a searchable Web site, the business name, owner name, and physical address of every licensed cigarette or tobacco product retailer.~~

~~(3)~~

~~(1) The act Cigarette and Tobacco Products Licensing Act of 2003 requires the board State Board of Equalization to take action against a retailer convicted of furnishing tobacco products to a person under 18 years of age. Prior to suspending or revoking a retailer's license to sell cigarette and tobacco products, the act requires the board to notify the retailer and include instructions for appealing the license suspension or revocation. The act prescribes penalties for the first through eighth 8th convictions. The act limits when the board has authority to take action against retailers.~~

~~This bill would make changes to those penalties for convictions by requiring the board to revoke a licensee's license for specified periods upon multiple convictions. The bill would require authorize a hearing to appeal a license suspension or revocation to be conducted in accordance with formal administrative adjudication procedures. The bill would repeal the limitations on the board's authority to take action against retailers. The bill would require the board to cause to be posted in a conspicuous place on or about the retailer's licensed premises a notice stating that the retailer's license to sell cigarette and tobacco products has been suspended by order of the board because of violation of state laws or regulations.~~

~~(4) The act prohibits a person or entity from engaging in the business of selling cigarettes or tobacco products in this state without a license or after a license has been suspended or revoked, punishable as a misdemeanor by a fine not to exceed \$5,000, or imprisonment not exceeding one year in a county jail, or both.~~

~~This bill would expand that prohibition to additionally include a person or entity that engages in giving away or otherwise furnishing cigarettes or tobacco products under those circumstances, thereby imposing a state-mandated local program by changing the definition of a crime.~~

The bill would *also* require a state or local law enforcement agency to notify the board of any violation involving *a licensee or* licensed premises within 30 days of a final judgment ~~and would specify that the notice and any corroborating evidence given to the board be presumed true, subject to rebuttal.~~ By creating additional duties for a local law enforcement agency, the bill would impose a state-mandated local program.

~~(5) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.~~

~~This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.~~

~~With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.~~

*(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.*

*This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.*

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1     ~~SECTION 1.—Section 22973.1 of the Business and Professions~~  
2     ~~Code is amended to read:~~

3     ~~22973.1.—(a) The board shall issue a license to a retailer upon~~  
4     ~~receipt of a completed application and payment of the fees~~  
5     ~~prescribed in Section 22973, but may not issue a license if any of~~  
6     ~~the following apply:~~

7     ~~(1) The retailer, or if the retailer is not an individual, any person~~  
8     ~~controlling the retailer, has previously been issued a license that is~~  
9     ~~suspended or revoked by the board for violation of any of the~~  
10    ~~provisions of this division.~~

11    ~~(2) The application is for a license or renewal of a license for~~  
12    ~~a retail location that is the same retail location as that of a retailer~~  
13    ~~whose license was revoked or is subject to revocation proceedings~~  
14    ~~for violation of any of the provisions of this division, unless:~~

15    ~~(A) It has been more than five years since a previous license for~~  
16    ~~the retail location was revoked.~~

17    ~~(B) The person applying for the license provides the board with~~  
18    ~~documentation demonstrating that the applicant has acquired or is~~  
19    ~~acquiring the premises or business in an arm's length transaction.~~  
20    ~~For purposes of this section, an "arm's length transaction" is~~  
21    ~~defined as a sale in good faith and for valuable consideration that~~  
22    ~~reflects the fair market value in the open market between two~~  
23    ~~informed and willing parties, neither under any compulsion to~~  
24    ~~participate in the transaction. A sale between relatives, related~~  
25    ~~companies or partners, or a sale for the primary purpose of~~  
26    ~~avoiding the effect of the violations of this division that occurred~~  
27    ~~at the retail location, is presumed not to be made at "arm's length."~~

28    ~~(3) The application is for a license for a retail location that has~~  
29    ~~no fixed geographical location, including, but not limited to, sales~~  
30    ~~by persons on foot or from vehicles.~~

31    ~~(4) The retailer, or if the retailer is not an individual, any person~~  
32    ~~controlling the retailer, has been convicted of a felony pursuant to~~  
33    ~~Section 30473 or 30480 of the Revenue and Taxation Code.~~

34    ~~(5) The retailer does not possess all required permits or licenses~~  
35    ~~required under the Revenue and Taxation Code.~~

36    ~~(b) (1) Any retailer who is denied a license may petition for a~~  
37    ~~redetermination of the board's denial of the license within 30 days~~  
38    ~~after service upon that retailer of the notice of the denial of the~~

1 license. If a petition for redetermination is not filed within the  
2 30-day period, the determination of denial becomes final at the  
3 expiration of the 30-day period.

4 (2) Every petition for redetermination shall be in writing and  
5 shall state the specific grounds upon which the petition is founded.  
6 The petition may be amended to state additional grounds at  
7 anytime prior to the date on which the board issues its order or  
8 decision upon the petition for redetermination.

9 (3) If the petition for redetermination is filed within the 30-day  
10 period, the board shall reconsider the determination of the denial  
11 and, if the retailer has so requested in the petition, shall grant the  
12 retailer an oral hearing and shall give the retailer at least 10 days'  
13 notice of the time and place of the hearing. The board may continue  
14 the hearing from time to time as may be necessary.

15 (4) The order or decision of the board upon a petition for  
16 redetermination becomes final 30 days after mailing of notice  
17 thereof.

18 (5) Any notice required by this subdivision shall be served  
19 personally or by mail. If by mail, the notice shall be placed in a  
20 sealed envelope, with postage paid, addressed to the retailer at the  
21 address as it appears in the records of the board. The giving of  
22 notice shall be deemed complete at the time of deposit of the notice  
23 in the United States Post Office, or a mailbox, subpost office,  
24 substation or mail chute or other facility regularly maintained or  
25 provided by the United States Postal Service, without extension of  
26 time for any reason. In lieu of mailing, a notice may be served  
27 personally by delivering to the person to be served and service  
28 shall be deemed complete at the time of such delivery. Personal  
29 service to a corporation may be made by delivery of a notice to any  
30 person designated in the Code of Civil Procedure to be served for  
31 the corporation with summons and complaint in a civil action.

32 SEC. 2. Section 22973.2 of the Business and Professions  
33 Code is amended to read:

34 22973.2. (a) The board shall, upon request, provide to the  
35 State Department of Health Services, the office of the Attorney  
36 General, a local law enforcement agency, and any local health  
37 department, access to the board's database of licenses issued to  
38 retailers. The agencies authorized by this section to access the  
39 board's database may access the database of licensees for purposes

1 of enforcing tobacco control laws, conducting public health  
2 surveillance, and educational outreach.

3 (b) The State Board of Equalization shall make available to the  
4 public, via a searchable Web site, the business name, owner name,  
5 and physical address of every licensed cigarette or tobacco product  
6 retailer.

7 SEC. 3. Section 22974.8 of the Business and Professions  
8 Code is amended to read:

9 22974.8. (a) (1) The board shall take action against a retailer  
10 convicted of a violation of either the STAKE Act (Division 8.5  
11 (commencing with Section 22950) or Section 308, 308.1, 308.2,  
12 or 308.3 of the Penal Code, according to the schedule set forth in  
13 subdivision (b).

14 (2) Convictions of violations by a retailer at one retail location  
15 may not be accumulated against other locations of that same  
16 retailer.

17 (3) Convictions of violations accumulated against a prior retail  
18 owner at a licensed location may not be accumulated against a new  
19 retail owner at the same retail location.

20 (4) Prior to suspending or revoking a retailer's license to sell  
21 cigarette and tobacco products, the board shall notify the retailer.  
22 The notice shall include instructions for appealing the license  
23 suspension or revocation.

24 (b) (1) Upon the first conviction of a violation, the retailer  
25 shall receive a warning letter from the board that delineates the  
26 circumstances under which a retailer's license may be suspended  
27 or revoked and the amount of time the license may be suspended  
28 or revoked.

29 (2) Upon the second conviction of a violation within 12  
30 months, the board shall suspend the retailer's license to sell  
31 cigarette and tobacco products for 30 days.

32 (3) Upon the third conviction of a violation within 12 months,  
33 the board shall suspend the retailer's license to sell cigarette and  
34 tobacco products for 90 days.

35 (4) Upon the fourth conviction of a violation within 12 months,  
36 the board shall suspend the retailer's license to sell cigarette and  
37 tobacco products for 120 days.

38 (5) Upon the fifth conviction of a violation within 24 months,  
39 the board shall suspend the retailer's license to sell cigarette and  
40 tobacco products for 365 days.

1 ~~(6) Upon the eighth conviction of a violation within 24 months,~~  
2 ~~the board shall revoke the retailer's license to sell cigarette and~~  
3 ~~tobacco products.~~

4 ~~(c) The decision of the board to suspend or revoke the retailer's~~  
5 ~~license may be appealed to the board within 30 days after the notice~~  
6 ~~of suspension or revocation. All appeals shall be submitted in~~  
7 ~~writing. A hearing to appeal a license suspension or revocation~~  
8 ~~shall be conducted in accordance with Chapter 5 (commencing~~  
9 ~~with Section 11500) of Part 1 of Division 3 of Title 2 of the~~  
10 ~~Government Code. The license suspension shall remain in effect~~  
11 ~~while the hearing is conducted. A license may not be reinstated~~  
12 ~~until the board provides the retailer with notice that the license~~  
13 ~~suspension has been overturned.~~

14 ~~(d) Whenever the board suspends a retailer's license to sell~~  
15 ~~cigarette and tobacco products, the board shall, on the date the~~  
16 ~~suspension becomes effective, cause to be posted in a conspicuous~~  
17 ~~place on or about the retailer's licensed premises a notice in a form~~  
18 ~~prescribed by the board, stating that the license has been suspended~~  
19 ~~by order of the board because of violation of state laws or~~  
20 ~~regulations.~~

21 ~~(1) During the suspension period, a person may not remove,~~  
22 ~~alter, cover, or in any way disturb the posted notice of suspension.~~

23 ~~(2) A person may not place, permit, or allow to be placed in, at,~~  
24 ~~or upon the licensed premise, a notice or statement of reason or~~  
25 ~~purpose, indicating that the premises have been closed or the sale~~  
26 ~~of tobacco products is discontinued for any reason other than~~  
27 ~~stated in the notice of suspension.~~

28 ~~(3) During the suspension period, the retailer may operate his~~  
29 ~~or her business, provided there is no sale or distribution of tobacco~~  
30 ~~products and no commercial speech promoting the sale or~~  
31 ~~distribution of tobacco products on the premises.~~

32 ~~SEC. 4.—~~

33 ~~SECTION 1. Section 22974.8 of the Business and Professions~~  
34 ~~Code is repealed.~~

35 ~~22974.8. (a) (1) The board shall take action against a~~  
36 ~~retailer, convicted of a violation of either the Stake Act (Division~~  
37 ~~8.5 (commencing with Section 22950) or Section 308 of the Penal~~  
38 ~~Code, according to the schedule set forth in subdivision (b).~~



~~(2) Convictions of violations by a retailer at one retail location may not be accumulated against other locations of that same retailer.~~

~~(3) Convictions of violations accumulated against a prior retail owner at a licensed location may not be accumulated against a new retail owner at the same retail location.~~

~~(4) Prior to suspending or revoking a retailer's license to sell cigarette and tobacco products, the board shall notify the retailer. The notice shall include instructions for appealing the license suspension or revocation.~~

~~(b) (1) Upon the first conviction of a violation of either the STAKE Act (Division 8.5 (commencing with Section 22950)) or Section 308 of the Penal Code, the retailer shall receive a warning letter from the board that delineates the circumstances under which a retailer's license may be suspended or revoked and the amount of time the license may be suspended or revoked. The retailer and its employees shall receive training on tobacco control laws from the Department of Health Services upon a first conviction.~~

~~(2) Upon the second conviction of a violation of either the STAKE Act (Division 8.5 (commencing with Section 22950)) or Section 308 of the Penal Code within 12 months, the retailer shall be subject to a fine of five hundred dollars (\$500).~~

~~(3) Upon the third conviction of a violation of either the STAKE Act (Division 8.5 (commencing with Section 22950)) or Section 308 of the Penal Code within 12 months, the retailer shall be subject to a fine of one thousand dollars (\$1,000).~~

~~(4) Upon the fourth to the seventh conviction of a violation of either the STAKE Act (Division 8.5 (commencing with Section 22950)) or Section 308 of the Penal Code within 12 months, the board shall suspend the retailer's license to sell cigarette and tobacco products for 90 days.~~

~~(5) Upon the eighth conviction of a violation of the STAKE Act (Division 8.5 (commencing with Section 22950)) or Section 308 of the Penal Code within 24 months, the board shall revoke the retailer's license to sell cigarette and tobacco products.~~

~~(c) The decision of the board to suspend or revoke the retailer's license may be appealed to the board within 30 days after the notice of suspension or revocation. All appeals shall be submitted in writing.~~



~~(d) The board's authority to take action against retailers, as set forth in this section, commences on the date of the release of the results from the survey undertaken by the Department of Health Services pursuant to Section 22952 of the Business and Professions Code Section 22952 to comply with Section 1926 of Title XIX of the federal Public Health Service Act (42 U.S.C. 300x-26), and any implementing regulations adopted in relation thereto by the United States Department of Health and Human Services, showing that the youth purchase survey finds that 13 percent or more of youth were able to purchase cigarettes. The board's authority to take action under this section is inoperative on or after the date of the subsequent release of the results from the survey showing that less than 13 percent of youth were able to purchase cigarettes.~~

*SEC. 2. Section 22974.8 is added to the Business and Professions Code, to read:*

*22974.8. (a) In addition to any other civil or criminal penalty provided by law, any conviction of a violation by a licensee of Section 22958, 22960, 22962, or 22963, or subdivision (a) of Section 308 of the Penal Code is grounds for the revocation of a license.*

*(b) If a conviction of a violation described in subdivision (a) is determined by the state or local law enforcement agency to have been committed by an agent of a licensee, the board shall deem true this determination. This board action may be appealed pursuant to subdivision (d).*

*(c) If the board finds that there are grounds for revocation of a license, the board shall impose the following sanctions:*

*(1) Upon a finding by the board of a second conviction of a violation of any of the provisions described in subdivision (a), within a five-year period, by a licensee or by any agent or employee of a licensee, the license shall be revoked for 30 days.*

*(2) Upon a finding by the board of a third conviction of a violation of any of the provisions described in subdivision (a), within a five-year period, by a licensee or by any agent or employee of a licensee, the license shall be revoked for 90 days.*

*(3) Upon a finding by the board of a fourth conviction of a violation of any of the provisions described in subdivision (a), within a five-year period, by a licensee or by any agent or employee of a licensee, the license shall be revoked for 120 days.*

1 (4) Upon a finding by the board of a fifth conviction of a  
2 violation of any of the provisions described in subdivision (a),  
3 within a five-year period, by a licensee or by any agent or  
4 employee of a licensee, the license shall be revoked for 365 days.

5 (d) (1) Any licensee whose license is revoked under  
6 subdivision (c) may petition the board for a redetermination of this  
7 revocation within 30 days after service upon that licensee of the  
8 notice of this revocation. If a petition for redetermination is not  
9 filed within the 30-day period, the revocation becomes final at the  
10 expiration of the 30-day period.

11 (2) Every petition for redetermination shall be in writing and  
12 shall state the specific grounds upon which the petition is founded.  
13 The petition may be amended to state additional grounds at any  
14 time prior to the date on which the board issues its order or  
15 decision upon the petition for redetermination.

16 (3) If the petition for redetermination is filed within the 30-day  
17 period, the board shall redetermine the revocation and, if the  
18 retailer has so requested in the petition, shall grant the retailer an  
19 oral hearing and shall give the retailer at least 10 days notice of  
20 the time and place of the hearing. The board may continue the  
21 hearing from time to time as may be necessary.

22 (4) The order or decision of the board upon a petition for  
23 redetermination becomes final 30 days after mailing of notice  
24 thereof.

25 (5) Any notice required by this subdivision shall be served  
26 personally or by mail. If by mail, the notice shall be placed in a  
27 sealed envelope, with postage paid, addressed to the licensee at the  
28 address as it appears in the records of the board. The giving of  
29 notice shall be deemed complete at the time of deposit of the notice  
30 in the United States Post Office, or a mailbox, subpost office,  
31 substation or mail chute, or other facility regularly maintained or  
32 provided by the United States Postal Service, without extension of  
33 time for any reason. In lieu of mailing, a notice may be served  
34 personally by delivering to the person to be served and service  
35 shall be deemed complete at the time of that delivery. Personal  
36 service to a corporation may be made by delivery of a notice to any  
37 person designated in the Code of Civil Procedure to be served for  
38 the corporation with summons and complaint in a civil action.

39 SEC. 3. Section 22980.05 is added to the Business and  
40 Professions Code, to read:

22980.05. (a) A state or local law enforcement agency shall notify the board of any violation over which the board has jurisdiction that involves a licensee or licensed premises, within 30 days of a final judgment.

(b) Notice by a state or local law enforcement agency to the board shall include all of the following:

(1) A certified copy of the final judgment for a criminal or civil case.

(2) The retailer's license information for the location at which the violation occurred.

(3) If the judgment is only against an employee, the result of an administrative hearing concluding that the sales clerk was an agent of the retailer at the time of the violation.

~~(c) Notice and any corroborating evidence given to the board by a law enforcement agency or the State Department of Health Services that a licensee has sold a tobacco product to a person under 18 years of age shall be presumed by the board to be true, subject to rebuttal.~~

~~SEC. 5. Section 22980.2 of the Business and Professions Code is amended to read:~~

~~22980.2. (a) A person or entity that engages in the business of selling, giving away, or otherwise furnishing cigarettes or tobacco products in this state without a license or after a license has been suspended or revoked, and each officer of any corporation that so engages in business, is guilty of a misdemeanor punishable as provided in Section 22981.~~

~~(b) Each day after notification by a law enforcement agency that a manufacturer, wholesaler, distributor, importer, retailer, or any other person required to be licensed under this act sells, gives away, or otherwise furnishes cigarette and tobacco products without a valid license for the location from which they are offered shall constitute a separate violation.~~

~~(c) Continued sales, giving away, or otherwise furnishing of cigarettes or tobacco products after a notification of suspension or revocation shall constitute a violation of Section 22981, and shall result in the seizure of all cigarettes and tobacco products in the possession of the person by the board or a law enforcement agency. Any cigarettes and tobacco products seized by the board or by a law enforcement agency shall be deemed forfeited.~~

~~SEC. 6. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for certain costs that may be incurred by a local agency or school district because in that regard this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.~~

~~However, notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains other costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars (\$1,000,000), reimbursement shall be made from the State Mandates Claims Fund.~~

*SEC. 4. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars (\$1,000,000), reimbursement shall be made from the State Mandates Claims Fund.*